

SPERA CONSTRUCTION CO.

FEBRUARY 25, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7944]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7944) for the relief of Spera Construction Co., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of \$5,142.50 to the Spera Construction Co., of Harrisburg, Pa., in full settlement of all claims against the United States as reimbursement of increased costs incurred by it in order to expedite, at the request of the contracting officer for the United States Air Force, the time of performance of a contract to construct a fuel accessories test facility at Olmsted Air Force Base, Middletown, Pa. (contract No. AF 36(600)-1857, dated September 17, 1954).

The Department of the Air Force has given in detail in its report dated August 23, 1957, the complete history of this proposed legislation which is made a part of the report. Your committee having reviewed the lengthy report together with a statement made by Mr. Joseph J. Spera, president of Spera Construction Co., concur in the recommendation of the Air Force and recommend favorable consideration be given the bill.

The author of the bill advises the committee that an attorney is involved and is entitled to a fee.

The report from the Department of the Air Force is as follows:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, August 23, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a Department of the Air Force report on H. R. 7944, 85th Congress, a bill for the relief of the Spera Construction Co.

The purpose of H. R. 7944 is to authorize and direct the Secretary of the Treasury to pay the sum of \$5,142.50 to the Spera Construction Co., of Harrisburg, Pa. The payment of such sum is to be in full settlement of all claims of subject company against the United States for reimbursement of increased costs incurred by it in order to expedite, at the request of the contracting officer, the time for completion of work for the construction of a fuel accessories facility at Olmsted Air Force Base, Middletown, Pa., under contract No. AF 30 (6000)-1857, dated September 17, 1954.

Under the terms of the above-mentioned contract, Spera Construction Co. agreed to construct the facility for a price of \$337,130.65 and to complete the work within 12 months from the date of receipt of notice to proceed.

On September 23, 1954, the contracting officer inquired of the contractor concerning the possibility of changing the completion date to 10 months. This was done because it was discovered that the equipment to be installed in the facility would be ready prior to the end of the 12-month period.

Notice to proceed with the work was issued on September 25, 1954, and was received by the contractor on September 28, 1954. On the same date it received the notice to proceed, the contractor wrote a letter to the contracting officer acknowledging receipt of the notice to proceed, stating that it was preparing progress charts for completion of the work within a 10-month period. The letter concluded by stating that "If your office wishes to consider the above, we will be very willing to work with you and your forces to obtain an earlier completion date."

Shortly thereafter the contracting officer, in accordance with normal procedure, consulted the Air Installations Office to receive approval for the contemplated expedited construction. He was advised that approval could not be given, as the use of funds for this purpose was prohibited by statute. The contracting officer advised the contractor of this decision. Thereafter, the contractor's president visited the contracting officer, expressing the hope that additional funds could be made available in some way and indicated that he was proceeding on the 10-month schedule.

On July 6, 1955, the contractor wrote a letter to the successor contracting officer requesting a change order to cover additional compensation in the amount of \$5,412.50 incurred in expediting the construction work. By letter dated August 17, 1955, the contracting officer denied the contractor's request for additional compensation by a formal findings and decision. The reasons for denial were that the proposal to expedite construction at an increased price had never been accepted by the Government and that the Supplemental Appropriation Act of 1955, which appropriated the funds used for this construction,

prohibited the use of such funds for the purpose of expediting construction.

On September 2, 1955, the contractor filed an appeal from the decision of the contracting officer with the Armed Services Board of Contract Appeals. The appeal was assigned ASBCA case No. 3063.

In support of its appeal, the contractor argued that it had changed the completion schedule of the work from 12 to 10 months at the verbal request of the contracting officer; that it placed its order for steel to meet this expedited completion schedule from warehouses rather than mills at an increased cost of \$4,040; that the contracting officer approved the expedited schedule; that it took every possible step to finish the work in accordance with the new schedule, using overtime when necessary at an increased cost for overtime of \$1,102.50; that it incurred these additional costs in the expectation that it would receive additional compensation; that the contracting officer knew of this situation and at no time advised the contractor that the expedited completion date was not required but on the contrary, the contracting officer verbally instructed the contractor that early completion of the project was of the utmost urgency; and that the contracting officer approved the revised construction schedule for completion of the work in a 10-month period.

The Government argued before the Board that the contracting officer at no time accepted the contractor's offer to expedite the construction schedule; that the contracting officer could not approve expediting of the delivery schedule without approval by higher authority; that such approval was not forthcoming because of statutory prohibitions; and that the offer of the contractor to expedite construction for an increased price was in effect rejected.

Evidence developed during the hearing before the Board indicated that the president of the contractor company admitted that the contractor never received specific instruction to proceed with the work on an expedited schedule, but that he assumed, surmised, and believed that it was proper for the contractor to do so. It was further brought out that funds to pay for this construction work were authorized under Public Laws 207 and 663, 83d Congress, and that each of these laws contained the following language:

"None of the funds involved in this Act shall be expended for additional costs involved in expediting construction: *Provided*, That the Secretary of Defense or his designee for the purpose shall establish a reasonable completion date for each project, taking into consideration the type and location of the project, the climatic and seasonal conditions affecting the construction and the application of economical construction practice."

By decision dated October 4, 1956, the Armed Services Board of Contract Appeals denied the appeal of the contractor for the reasons hereinafter stated.

The Board found that the contracting officer, by conduct at least, approved and acquiesced in the shortening of the time schedule—and any added expense incident thereto—which he initiated and set in motion by his conference with the contractor's president on or about September 23, 1954.

The Board next considered whether the contracting officer's authority to make a change in the contract to authorize additional compensation for the expedited delivery schedule was so curtailed by

statutory provisions binding upon both parties to the contract, that no effect could be given to the proposed change. After examining sections 301, 501, and 502 of Public Law 209, 83d Congress, 1st session, August 7, 1953; sections 803 and 805 of Public Law 207 of the same session of the Congress and of the same date, and section 904 of Public Law 663, 83d Congress, 2d session, August 26, 1954, which appropriate the funds used for this work, the Board came to the following conclusion:

"That the authorization and appropriation acts must be read together as contemporaneous and integrated legislation and that so considered they evince the congressional intent that no funds should be expended for expedited construction on any of the projects within their purview unless specifically authorized by the Secretary of Defense or his designee for that purpose—which authorization the Board pointed out was not given in this instance."

Accordingly, the Board denied the appeal of the Spera Construction Co.

The Department of the Air Force has considered the subject bill in the light of the above facts and circumstances. It is the opinion of this Department that the contractor in good faith accelerated the completion of this contract work and thereby incurred the extra cost claimed. It is also believed that this was done at the implied, if not specific, request of the contracting officer and that additional compensation would have been provided by a change in the contract had not the contracting officer subsequently discovered that approval for such a contract change could not be obtained because of statutory prohibitions.

The Department of the Air Force believes that the contractor acted in good faith throughout and rendered additional services to the Government for which it should be paid reasonable compensation. The amount of \$5,142.50 appears reasonable. The Department of the Air Force recommends favorable enactment of H. R. 7944.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

V. J. ADDUCI,
Colonel, USAF,
Assistant Director, Legislative Liaison.

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